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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,464

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Russell Alan Foltz-Smith

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SNR DENTON US LLP

P.O. BOX 061080

CHICAGO, IL 60606-1080

EXAMINER

UBER, NATHAN C

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

12/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
After the Filing of an Appeal Brief

Application No.

10/797,464

Applicant(s)

FOLTZ-SMITH ET AL.

Examiner

NATHAN C. UBER

Art Unit

3622

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 13 December 2010 is acknowledged.

1. ☒ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☒ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: Examiner has reviewed the proposed amendments, and agrees that they do not introduce new matter and would place the claims in better condition for appeal by overcoming a 112 2nd paragraph rejection and a claim objection as indicated by Applicant in Applicant's remarks filed on 13 December 2010. However, because Applicant filed the amendment on the same day as the notice of appeal and the appeal brief, Examiner may not enter the amendments. As noted CFR 41.33(b) indicates that once the notice of appeal and the appeal brief are filed, Examiner may only permit entry of amendments that cancel claims, or change a dependent claim to an independent claim, or place the claims in condition for allowance. In this case the amendments only address a formality and a 112/antecedent basis rejection - the amendments do not place the claim into condition for allowance, they do not cancel any existing claims and they do not convert any dependent claims to independent claims. Accordingly Examiner must refuse entry of these amendments in accordance with the procedures explain in MPEP section 1206.

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622

/Nathan C Uber/
Examiner, Art Unit 3622